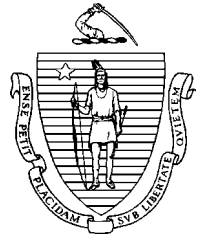




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 490

IN THE MATTER
OF
KEVIN POIRIER

DISPOSITION AGREEMENT

This Disposition Agreement (“Agreement”) is entered into between the State Ethics Commission (“Commission”) and Kevin Poirier (“Rep. Poirier”) pursuant to §5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Poirier had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Poirier violated G.L. c. 268A, §3.

The Commission and Rep. Poirier now agree to the following facts and conclusions of law:

1. Rep. Poirier has served in the state legislature from January 1977 to the present. During that time, he has served on various committees including Ways & Means from 1991 to the present. Rep. Poirier also served as the assistant minority leader (1987 to 1990).
2. Rep. Poirier has co-sponsored two bills affecting the insurance industry.
3. In addition, Rep. Poirier, as a member of various legislative committees, has participated in hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Rep. Poirier also has voted on bills of interest to the insurance industry when they reached the House floor.
4. During the period relevant here, F. William Sawyer (“Sawyer”) was the senior John Hancock Mutual Life Insurance Company, Inc. (“Hancock”) lobbyist responsible for Massachusetts legislation. At all relevant times, he was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation’s sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.
5. At all relevant times, Rep. Poirier knew that Sawyer was a Massachusetts registered lobbyist for Hancock. On occasion, Sawyer lobbied Rep. Poirier regarding various pieces of legislation.
6. Lobbyists are employed to promote, oppose or influence legislation.
7. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.
8. Each summer from 1988 to 1991, Sawyer took a group of legislators and their guests out for dinner and drinks at a Cape Cod restaurant. In 1988 the dinner was held at The Regatta Restaurant in Cotuit. In 1989 through 1991 the dinner was held at the Cranberry Moose Restaurant in Yarmouthport. The cost of each of these dinners was between

\$736.10 and \$1,131.89. On the evenings of July 1, 1988, July 2, 1989, July 2, 1990, and July 4, 1991, Poirier and his wife attended these dinners. The Poiriers' pro rata share of the cost of the dinners was \$81.79, \$160.79, \$150.91 and \$125.54, respectively.

9. Between November 24, 1990, and November 29, 1990, Rep. Poirier, his spouse and eight year old son were in Walt Disney World, Florida where Rep. Poirier had registered and attended an educational conference sponsored by the Conference of Insurance Legislators. On the evening of November 25, 1990, Rep. Poirier, his spouse, and son, along with approximately 25 other legislators, lobbyists and their guests, ate at the Pomp Grill Lounge in Walt Disney World. The cost of the meal was approximately \$2,000.00. The Poiriers' pro rata share of the cost of the dinner was approximately \$165.00. Similarly, on November 28, 1990, Rep. Poirier and his family, along with approximately 10 other legislators, lobbyists and their guests, ate at the Buena Vista Palace at Walt Disney World. The cost of the dinner was \$342.48. The Poiriers' pro rata share of the cost of the dinner was approximately \$65.00. Sawyer paid for both of these meals.

10. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

11. Massachusetts legislators are state employees.

12. Anything worth \$50 or more is of substantial value for §3 purposes.^{1/}

13. By accepting a total of \$749.03 in drinks and meals from Sawyer, all while Rep. Poirier was in a position to take official action which could benefit that lobbyist and/or his employer, Hancock, Rep. Poirier accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so he violated §3(b).^{2/}

14. The Commission is aware of no evidence that the gratuities or gifts referenced above were provided to Rep. Poirier with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Rep. Poirier took any official action concerning any proposed legislation which would affect the registered Massachusetts lobbyist in return for the gratuities or gifts. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{3/}

15. Rep. Poirier cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Poirier, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Poirier:

(1) that Rep. Poirier pay to the Commission the sum of two thousand, two hundred and fifty dollars (\$2,250.00) for violating G.L. c. 268A, §3(b);^{4/} and

(2) that Rep. Poirier waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{2/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking

the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

Rep. Poirier has argued that §3 does not apply to meals given to legislators. There is nothing in the legislative history regarding §3 or the language of §3 to support that argument. In the Commission's view, §3 applies to any form of entertainment, including meals, given to any public official.

On the present facts, §3 applies to the lobbyists entertaining Rep. Poirier where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

^{3/} As discussed above in footnote 2, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between the lobbyist and Rep. Poirier.

^{4/} This amount is approximately three times the value of the \$749.03 in prohibited gratuities received by Rep. Poirier in violation of §3. It represents both a disgorgement of the value of the gratuities and a civil sanction.